Supreme Court, U.S.
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No. 10-681

**In the**

**SUPREME COURT of the UNITED STATES**

**October Term, 2010**

**UNITED STATES OF AMERICA,**

**Petitioner,**

**against**

**DONAHUE DEWAR and SHARON KING,**

**Respondents.**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

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# BRIEF FOR SHARON KING IN OPPOSITION

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## QUESTION PRESENTED

Whether the government's petition for certiorari in this case should be granted because of the Court's decision in *Abbott v. United States*, 562 U.S. ____, 131 S.Ct. 18 (2010).

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## BRIEF FOR SHARON KING IN OPPOSITION

Petitioner Sharon King ("King") respectfully submits this brief in opposition to the petition for certiorari filed by the government in this case.

## OPINIONS AND ORDERS BELOW

The Opinion of the United States Court of Appeals for the Second Circuit, unofficially reported as *United States v. Dewar*, 375 Fed.Appx. 90 (2d Cir. 2010), appears as Appendix A to the government's petition (Pet. App. A). The Order of the United States Court of Appeals for the Second Circuit denying respondent's motion for rehearing and rehearing *en banc* appears as Pet. App. B to that petition.

## JURISDICTION

The decision of the Court of Appeals for the Second Circuit was entered on April 29, 2010. (Pet. App. A) King's petition for rehearing and rehearing *en banc* was denied by the court of appeals on August 31, 2010. (Pet. App. B) The government's petition for certiorari was filed on Nov 24, 2010. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## STATEMENT OF THE CASE

A jury convicted King of conspiracy to distribute and possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846 [count 1]; distribution and possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(b)(1)(B) [count 3]; distribution and possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(b)(1)(D) [count 4]; and using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) and (2) [count 5]. Thereafter, she was sentenced to an aggregate term of imprisonment of 121 months, consisting of terms of 121 months on counts 1 and 3, 60 months on count 4 and 0 months on count 5, all of which were imposed concurrent to each other, to be followed by an aggregate five-year term of supervised release. She is currently incarcerated pursuant to that sentence.

King appealed her conviction and sentence; the government appealed the sentence imposed with particular reference to the district court's failure to impose a consecutive five-year sentence under 18 U.S.C. § 924(c). Recognizing that the sentence imposed by the district court was proper under circuit precedent, as articulated in *United States v. Williams*, 558 F.3d 166 (2d Cir. 2009) and *United States v. Whitley*, 529 F.3d 150 (2d Cir. 2008), the government asked the circuit court of appeals to defer ruling on its appeal of King's sentence until there was a decision in this Court on then-pending questions in two cases in which certiorari had been granted. The circuit court declined to do so, and affirmed the district court's judgment. (Pet. App. A, pages 5a-6a)

Both King and the government filed petitions for certiorari. The former petition is presently pending before the Court in No. 10-7768, *Sharon King v. United States*.

## ARGUMENT

The government asks the Court to grant its petition, vacate the judgment and remand the case for further proceedings in light of *Abbott v. United States*, 562 U.S. ___, 131 S.Ct. 18 (2010). One of the cases cited by the court of appeals in declining to defer its decision on the government's appeal of King's sentence, *United States v. Williams*, 558 F.3d 166 (2d Cir. 2009), was referenced in *Abbot*,

131 S.Ct. at 24 n.2, as comprising a part of the "division among the Circuits." *Id.* at 24. Subsequent to *Abbot*, this Court granted certiorari in connection with the *Williams* case, v ted the judgment and remanded to the Second Circuit in light of *Abbot*. *United States v. Williams*, 131 S.Ct. 632 (2010).

While recognizing that *Abbot* implicates the correctness of the Second Circuit's decision in this case, King urges this Court to deny the petition for certiorari. Under Rule 10 of the Court's Rules, "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion." That rule goes on to state that "certiorari will be granted only for compelling reasons." Because the Court has resolved the conflict among the circuits with regard to the interpretation of § 924(c), we submit that no "compelling reason" exists for this Court to exercise its discretion by granting the government's petition for certiorari at this time. Accordingly, we ask that it be denied.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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